

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
BROCKMOLE, et al., : Docket #23cv8106
Plaintiffs, :
- against - :
EZ FESTIVALS LLC, et al., : New York, New York
Defendants. : May 29, 2024
----- :

PROCEEDINGS BEFORE
THE HONORABLE JENNIFER E. WILLIS,
UNITED STATES MAGISTRATE JUDGE

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE COURT: Good afternoon, everyone. It is Judge Willis. We are here in 23cv8106, Brockmole, et al. v. EZ Festivals, LLC, et al. Why don't we - I will sort of call out who should do their appearance first and then second and so on so there's no confusion. So why don't we start first with counsel for the Brockmole plaintiffs.

MR. FLETCHER MOORE: Good afternoon, Fletcher Moore for the Brockmole plaintiffs, for Moore Law and Squitieri & Fearon.

THE COURT: Good afternoon, sir. And then counsel for the, I'm sure I am not saying this correct, Avchukov plaintiffs.

MR. JONATHAN CORBETT: Good afternoon, Your Honor, Jonathan Corbett. Yeah, that's as good as I can pronounce it too.

THE COURT: All right, good afternoon, sir. And for the Palie plaintiffs.

MR. EYAL DROR: Good afternoon, Your Honor, this is Eyal Dror and also on the call is Shelly Friedland.

THE COURT: Good afternoon. And for the Ting plaintiffs.

MR. JACOB CHEN: Good afternoon, Your Honor,

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1
2 this is Jacob Chen for the Ting plaintiffs.

3 THE COURT: Good afternoon. And then for
4 defense, if counsel for EZ Festivals and Avant Gardner
5 could please state your name for the record.

6 MR. PATRICK KENNEL: Good afternoon, Your
7 Honor, my name is Patrick Kennell and with me is my
8 colleague Kathleen Mullins.

9 THE COURT: Good afternoon. For WRE
10 Management.

11 MR. RICHARD BOONE: Good afternoon, Your Honor,
12 this is Richard Boone from Wilson Elser for WRE Parent
13 U.S. Holding Company and WRE Management LLC.

14 THE COURT: All right, good afternoon, and I
15 understand there's also counsel for WRE Holding.

16 MR. BOONE: WRE Holding AG is a foreign
17 company. We have not yet ascertained whether or not
18 they wish to retain us to represent them. We're still
19 in the process of doing that. But we have entered our
20 appearance on behalf of the other two domestic entities.

21 THE COURT: I see. All right, and are there
22 any counsel for any parties on the line that I skipped
23 accidentally? All right, I will take that silence as an
24 indication that I've gotten an appearance for everyone
25 who needs to file an appearance or who needs to state

1
2 their appearance rather.

3 So we are here for an initial case management
4 conference on this matter, and I am in receipt of the
5 joint proposed case management plan filed by the parties
6 on May 23. I'm also in receipt of a joint status update
7 which was also filed on May 23 discussing deadlines and
8 the like for a number of different motions: motion to
9 dismiss, a motion to strike, and some others.

10 So before we turn to - and it seems to me from
11 reviewing the proposed plan everything is in agreement
12 in the main, and I don't have any objections to any of
13 the proposed dates. It looks like really the only issue
14 that we may need to discuss is whether or not a schedule
15 should be set for the filing of class certification.
16 But before we turn that issue, I did just want to give
17 all the parties an opportunity to tell me a bit about
18 the case from their perspective, if they think that that
19 would be helpful at this point. Obviously, I have
20 reviewed the plan and the summary sort of contained in
21 that, but I will give all parties an opportunity if
22 there's something more that they think would be helpful
23 for me to know about the case at the outset. So
24 Brockmole plaintiffs first.

25 MR. MOORE: Sure, Your Honor, this is Fletcher

Moore. I'll be very brief, Your Honor. The case (indiscernible) show is that the defendants promoted, marketed, and sold thousands of tickets for millions of dollars to a concert in Randalls Island, New York, and then the day - and the concert was technically a few days' festival. But for the first day of the three-day festival, they gave everybody very short-term notice that they were cancelling that day and that nobody would be able to attend the festival even though they all had paid for and had purchased valid tickets. And then the second day they advised their customers and concert goers that they were not able to access the festival until after it was supposed to start, essentially giving them half of the concerts.

And then on the third day they, because so many people were not able to attend the first and second days, on the third day the concert had exceeded capacity. It was in violation New York City fire codes. It was in violation of their permits. People were injured, you know, people were not able to access lavatory, it was unsanitary, it was unsafe. And that is essentially - and to this day, Your Honor, all of the people who were not able to attend the first day and half of the second day even though they paid for valid

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tickets, they haven't received refunds. And so they had completely lost, you know, 100 percent of the money they spent on those tickets, and the defendants have pocketed it without reimbursing them for anything. And that's essentially the case.

THE COURT: All right, thank you very much. And on behalf of Avchukov is there anything additional that you would like me to know from your perspective?

MR. CORBETT: Well, that's the basis of the case, and I'm sure the Court has that. The only thing that I would add is that we're now about nine months into the case (indiscernible) the initial case conference. My plaintiffs are anxious to see this case move forward, so we're just hoping that things move forward as expeditiously as possible.

THE COURT: All right, thank you, and on behalf of the Palie plaintiffs.

MR. DROR: Yes, Your Honor, I think what's been stated covers most of what I would say. I would just add in terms of the claims that we've alleged there's two sets of plaintiffs now. There's the Brockmole plaintiffs who have their complaint, and then there's the consolidated class action that's been brought by the Avchukov, Palie, and Ting plaintiffs. And I would just

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- the fact basis I think is common to all. I would just add that there are also claims of fraud in that the defendants continuously, up to and including the night before the festival was supposed to start on Friday, indicated to all of the paying customers that the festival would proceed as scheduled.

THE COURT: All right, thank you. And on behalf of the Ting plaintiffs.

MR. CHEN: I think my co-counsels here have pretty much laid out everything before the Court, and I have nothing further to add at this point.

THE COURT: All right, thank you very much. And what do I need to know from the defendants' perspective, starting first with EZ Festivals and Avant Gardner?

MR. KENNEL: Thank you, Your Honor, this is Patrick Kennell. So, yeah, I think there's not a fundamental disagreement over what this case is really about. It's a ticket refund class action case. My client ran the EZ Festival, the 2023 EZ Festival on Randalls Island. They fully acknowledge that the festival did not go as planned. There were a number of issues that were outside my clients' control, but, nonetheless, my clients, you know, acknowledge that the

1 festival just did not go as planned.

2 I think it's important for Your Honor to know,
3 and we've communicated this to the plaintiffs' counsel
4 during our Rule 26 conference a couple of weeks ago, my
5 clients are imminently about to announce a refund
6 process which will - and I will be emailing the
7 plaintiffs' counsel, as for some further details on how
8 that process will work and exactly who will get what
9 types of refunds. I now have that information, and my
10 colleagues on the other side will be emailing a little
11 bit more information on that later today.

12 But refunds will be going to many of the
13 affected concert goers in the next I want to say several
14 weeks, but since I don't fully know the timing, there
15 was a third-party vendor called See Tickets that handled
16 all the ticketing, that handled the collections, and
17 will be handling the refunds.

18 So that's an important component I think of all
19 class cases here and I think will significantly pare
20 down the scope of the case, but obviously that hasn't
21 happened yet. To Mr. Corbett's point, you know, wanting
22 to see things more forward, we're trying to do that, and
23 once that refund process goes forward, I think this case
24 will be pretty well positioned to come back before Your
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Honor for what I would hope to be a productive conference to get the case resolved.

THE COURT: All right, thank you very much. And on behalf of WRE Management.

MR. BOONE: Yes, good afternoon, Your Honor, this is Richard Boone. The WRE Parent U.S. Holding Corp. Inc. entity is only a landlord of a property in Brooklyn which has absolutely nothing to do with the festival at issue. It's the property where Avant Gardner has its other business located. And WRE Management is the management company for that landholding. We have not yet been able to ascertain the exact relationship of WRE Holding AG. Although we don't represent them, we're trying to determine that.

But in any event, what we're dealing with for the WRE entities is a landlord-tenant relationship that has nothing to do with this festival at all. The festival itself took place on Randalls Island and had nothing to do with the subject property in Brooklyn. So we intend to be moving to dismiss on behalf of those entities.

THE COURT: All right, thank you. Those were helpful from my perspective, sort of brief synopses of the base from everyone's perspective and sort of what

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may be, you know, next steps and important sort of steps in the process.

 You know, as I'd indicated, I wanted to discuss this question about what would make the most sense in terms of timing for briefing on class cert. When EZ Festivals was speaking, you did raise the potential of settlement, and that is also in the joint proposed case management plan. I wonder if - well, here's what I'll say about that. In the joint plan you all indicated that the parties were interested in, the language is the parties requested settlement conference no later than July 29. So what I will say with respect to that is in terms of my schedule I'm running at about a month and a half, two months out in terms of scheduling. So if the desire was to have a settlement before the end of July and obviously this question about what's happening with the refunds and what does that process look like and how is that going to happen sounds like that's obviously a key piece of that and the timing it seems like is still a little bit of a question mark of when, you know, that's going to take place. But I would say and I will issue a settlement order following today's conference just to get this process going that contacting my deputy with mutually agreeable dates and sort of getting on the

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schedule now is what would allow you to do a settlement towards the end of July.

So just to sort of give you that in terms of timing which I think then just leave us with this question of the timing of the filing of the motion for class cert, and obviously the plaintiffs have expressed an interest in doing that now. Defendants have expressed an interest in waiting until discovery is complete.

So, you know, let me turn to the plaintiffs first for why you think that that should happen now and, you know, if you could address this, the issue that the defendants have raised about the idea that there will be a need for some discovery so that the facts are clear on some of the issues that are relevant to class cert, and so why would it not make more sense to wait until, you know, all or some of the discovery is done so that we're not in a situation where you're moving for class cert and then later there's an attempt to decertify and sort of a back and forth process. But I'll turn to plaintiffs first, starting with Brockmole plaintiffs.

(pause in proceeding)

THE COURT: Brockmole, if you are speaking, you may be muted.

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MR. MOORE: Sorry about that. I am mute, I was muted. Your Honor, I just want to say I'll refer to my co-counsel, counsel for the other class plaintiffs as far as scheduling goes because I know that there has been a lot of conversations with defense counsel, and I think that they are very adamant about trying to, you know, move this case forward as quickly as possible because of potential, you know, delays in the past, and I'm going to defer to them as to what they want to do.

THE COURT: All right, that's certainly fine. I don't know who would like to sort of take the laboring oar here. Avchukov.

MR. CORBETT: Sure, I can get started. We think that the issues regarding or that are relevant to class certification right (indiscernible). There's no dispute that tens of thousands of people purchased tickets. There's no dispute that none of them were able to attend on one of the three days. I think there's going to be little dispute as to the other issues that happened on the days 2 and 3 also. But I'll leave it to the rest (indiscernible).

THE COURT: All right, so Palie plaintiffs.

MR. DROR: Yeah, yes, Your Honor, (indiscernible). I would just echo what Mr. Corbett

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2 just said. The class here is well defined as ticket
3 purchasers. The issues are very straightforward too,
4 you know, and we would like to move the case along. We
5 don't anticipate any issues with defining the class or
6 anything of that nature given the clearly defined groups
7 that are set forth in the complaints.

8 THE COURT: All right, and Ting plaintiffs.

9 MR. CHEN: Same thing. I think it's not a
10 complicated class certification, and we'd like to move
11 things faster before, faster sooner rather than later.

12 THE COURT: All right, so I'll turn to, you
13 know, EZ Festivals, and I certainly saw your, you know,
14 contention that some discovery you believe would be
15 needed as to commonality and typicality of the proposed
16 classes, the proposed class, but given that there really
17 isn't a dispute about sort of the core of what is going
18 on here, that it's ticket holders for a concert, a
19 festival rather of several days, concerts, that did not
20 happen doesn't or, you know, started and didn't happen
21 on various days and whatever other problems happened
22 here, that doesn't seem to be the sort of situation that
23 calls for discovery to sort of identify who's in, who's
24 out, what does the class look like. So why is it that
25 you feel discovery would be necessary before we could

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get into the class certification process, and I'll start with EZ Festivals and Avant Gardner first.

MR. KENNEL: Certainly, Your Honor. If the class was really that narrow, it might be easier to brief it, but I think when you look at the pleadings, at least the current pleadings, we've got RICO allegations, we have some uncertainty about what exactly, you know, what are the damages these plaintiffs are alleging. If it's just their ticket price which is going to be part of the refund process, that's a cleaner, straighter, narrower case, and I think we could easily do that. But I don't think that's what's alleged. I think some of the plaintiffs are seeking ancillary, reimbursement for ancillary expenses like travel and bus tickets, hotels, as I read the pleadings.

I'm happy to be disabused of that notion and learn that this case is much narrower than we've been reading in the pleadings, but I think there are potential damages components that could separate some of these plaintiffs and could call into question whether we're really at that stage for class cert.

THE COURT: But I mean that seems to me to sort of be the I'll call it the plaintiffs' risks to take, right, the plaintiff have the, the plaintiffs have the

burden of showing that there is commonality and typicality, and to the extent that they've got, you know, that they're - and I don't know what they're going to attempt to certify, but to the extent that it includes someone who is only out, I have no idea how much these tickets, you know, however much the ticket price and someone else who's, you know, scarred for life because they couldn't, you know, something horrible happened in the porta potty, that the burden is on them to show that somehow the issues are common. So I hear you on the idea that the complaint sort of sweeps more broadly than just ticket price alone, but that's sort of a strategic issue that plaintiffs always have to think about, do they want to move sooner rather than later, do they want to wait and what's sort of the risk-reward.

But I'll turn back to them to sort of hear their response to that, but it seems to me that they would take the risk of, if they're trying to certify and then it turns out that there's sort of this wide swath of different issues, then perhaps there's no typicality and commonality, and they would sort of take the risk of trying and maybe not being able to get over that hurdle. Was there anything more that you wanted to say about your request to wait until after discovery?

MR. KENNEL: Well, if I may be heard, Your Honor. I appreciate that, and I guess hearing you saying it that way, I mean maybe we would be happy to let them take that risk. What I worry about too is just being practical. If we get in the midst of briefing and then it's very clear we need some class discovery, there's some discovery on typicality issues, then here we are back in this same position, I just don't want to be opposing a class cert motion saying wait a minute, that's not what they said on this call. Now we need some discovery. It just seems to be a gigantic waste.

But, look, if the plaintiffs are willing to commit to that narrow damages set, if you will, and that's what the briefing would be on, that's what the proposed class would be on, then okay.

THE COURT: All right, and anything to add on behalf of WRE, I keep saying Management, but there's the parent. What is it, WRE Global, and I think I'm just not calling it right. WRE, the WRE defendants, anything to add?

MR. BOONE: Yeah, on behalf of the domestic WRE entities. We were just retained, we're still coming up to speed on this case. We don't really know essentially as much as we would like to about this case and what has

1 happened thus far. But just to echo our codefendants'
2 concerns, to the extent that WRE is even in this case at
3 the class cert stage, which we don't think it
4 appropriate for it to be, that we would want to know who
5 these plaintiffs are and their relationship to the
6 festival, what damages they're claiming and things like
7 that. Obviously, we have the allegations in the
8 complaint, but those are at this point just allegations.
9 We're not privy to any discovery that's happened thus
10 far, so we would certainly want to do class
11 certification discovery to determine whether or not
12 class certification is appropriate and whether or not
13 these are appropriate representatives of the purported
14 class.
15

16 But that said, again, we intend to move to
17 dismiss given that WRE's very, very, not even tangential
18 relationship to this festival, and hopefully the WRE
19 entities would be gone at the time of any class
20 certification hearing.

21 THE COURT: All right, thank you. So I'm going
22 to turn back to plaintiffs, you know, and in particular
23 I'm interested to hear your response to this idea that
24 in the first instance, when I asked you all about why
25 now on class certification, sort of everyone used the

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2 same kind of language that, you know, it's very clear
3 what's happening here, it is all kind of very narrow,
4 we've got the ticket holders and the festival doesn't
5 happen, but, you know, as various people pointed out in
6 their kind of opening remarks about the case from their
7 clients' perspective, there do appear to be, you know,
8 several different categories of damages, of alleged
9 damages I'll put it that way going from ticket, you
10 know, the cost of the ticket to other things.

11 So the defendants' argument that, you know, it
12 would make sense to sort of do some discovery to see
13 what if any potential classes exist and that, you know,
14 from their lens that makes more sense. Obviously, if
15 you all are just seeking class certification just on
16 ticket, you know, people bought the tickets and the cost
17 of tickets, that's a different kind of potential class
18 and a much narrower one. If that's what we're talking
19 about, it sounds like defendant does not object to going
20 forward now, but I will turn back to you all one last
21 time to hear what you have to say in response, starting
22 with Brockmole plaintiffs.

23 MR. MOORE: Thank you, Your Honor. We would
24 just say that we believe that there should be subclasses
25 and that, yes, you know, the RICO claim, you know, could

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be part of one subclass whereas just the ticket holders for Friday or, you know, ticket holders for Friday and Saturday or just Saturday could be another subclass. And when it comes to, you know, the ticket holders from Friday, I mean I don't think there's any real defense there. Defendant knows they kept the money, and the plaintiffs have to be reimbursed or refunded. And so obviously for that subclass we really wouldn't need discovery, defendants (indiscernible) it wouldn't need discovery, and we could certify that right away.

THE COURT: So is your, on behalf of Brockmole plaintiffs, is your contention that when you say you want to move forward with class certification, that you would be proposing, you know, you would be seeing to certify particular subclasses for which there is no kind of factual contest but there might potentially be other classes that you would be seeking, subclasses you would be seeking to certify later once there is discovery. Is that what you're saying?

MR. MOORE: Yes, Your Honor, exactly.

THE COURT: All right, and on behalf of, every time I said this differently, Avchukov, Avchukov.

MR. CORBETT: Yes, Your Honor. I think it's important for the Court to remember there are two

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2 different complaints, the Brockmole complaint and then
3 the consolidated complaint. The consolidated complaint
4 does not include people injured in a porta potty or any
5 kind of individualized personal injuries. It is all
6 injuries that would be sustained by pretty much anyone
7 who went to the festival. So as to Brockmole's
8 complaint, it maybe make sense that they have classes
9 that they cannot yet certify. It's our position that we
10 could certify our (inaudible).

11 THE COURT: All right, and the Palie
12 plaintiffs.

13 MR. DROR: Yes, Your Honor, I would just agree
14 with what Mr. Corbett said. I don't have anything
15 additional to add to that.

16 THE COURT: All right, and lastly the Ting
17 plaintiffs.

18 MR. CHEN: Same as Mr. Corbett. As part of the
19 consolidated complaint, I think at least for us class
20 certification is much simpler, and I think it is
21 warranted at this point.

22 THE COURT: All right, thank you all for those
23 arguments. So it seems to me that what we are talking
24 about is just the potential certification of I'll call
25 it the more narrow potential class which is sort of the,

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2 you know, the folks, the issues that seem that they
3 would be common to anyone who had a ticket, couldn't get
4 into the concert, and that's not really the concern that
5 the EZ Festival defendants and Avant Gardner was
6 concerned about, sort of this idea of a more broad,
7 sweeping potential class. Obviously, the consolidated
8 plaintiffs, there's already I'll call it a narrowly
9 tailored lens on what they are alleging in their
10 complaint, and it's only Brockmole who seems to sweep
11 more broadly, and Brockmole's indicated that from their
12 perspective they would be seeking at this time to try to
13 certify a subclass that would be just the people harmed
14 by the holding of the tickets and not being able to
15 attend the three days of the festival. So I think that
16 that doesn't create the specter that Brockmole was
17 concerned about where there would really be a need for
18 some or all of discovery to take place first.

19 So I am going to have a schedule with respect
20 to the filing of the motion to certify, and I will
21 include that with the adoption of the proposed case
22 management plan shortly after we are done today. As I
23 indicated, I will also file my settlement order just so
24 that everyone has the sort of, you know, rules of
25 engagement on how to contact my deputy and schedule any

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2 settlement. And as I indicated, you know, scheduling
3 now or in the next week or two would likely get you in
4 before the end of July if that is the parties'
5 intention.

6 Is there anything else that we need to discuss
7 on behalf of anyone starting first with Brockmole
8 plaintiffs?

9 MR. MOORE: No, Your Honor, nothing further
10 from the Brockmole plaintiffs.

11 THE COURT: All right, thank you very much.
12 Anything else on behalf of Avchukov?

13 MR. CORBETT: No, thank you, Your Honor.

14 THE COURT: All right, anything else on behalf
15 of the Palie plaintiffs?

16 MR. DROR: No, Your Honor.

17 THE COURT: All right, anything else on behalf
18 of Ting plaintiffs?

19 MR. CHEN: No, Your Honor.

20 THE COURT: All right, thank you. Anything
21 else on behalf of EZ Festivals and Avant Gardner
22 defendants?

23 MR. KENNEL: Yes, Your Honor, I didn't want to
24 interrupt you earlier, but if I may be heard briefly on
25 the class cert motion timing. I maintain, you know,

1 this is the first we're hearing about potential
2 subclasses or disparate classes being concert goers,
3 whether they're in the Avchukov or the Brockmole camp,
4 and I just think that that looks like further
5 splintering of the case that sort of warrants putting
6 that briefing off until we've had some initial discovery
7 on it. And I just wanted to go on - I know Your Honor
8 will make the appropriate decision, but I just wanted to
9 go on record that we think that that alone militates for
10 putting it off until we at least had some initial
11 discovery, keeping in mind too if we're really talking
12 then about this narrow subclass being certified, we're
13 going to be briefing that subclass, if you will, while
14 at the same time they're going to be getting refunds. I
15 don't know, it just seems strange that we're basically
16 getting rid of a subclass while we're briefing
17 certification for that subclass. Anyway.

19 THE COURT: All right, I certainly hear that.
20 I mean, look, the reality with any case is that there's
21 often sort of parallel processing that's going on, the
22 very idea of refunds are happening and perhaps things
23 can be settled as early as the end of July which may be,
24 you know, before we've even completed briefing with
25 respect to the class certification. I feel like that is

1 always, those are always issues that are intention and
2 in play, and sometimes collectively the parties think,
3 well, better to wait for the refunds and wait for
4 settlement and let's just stay everything until after
5 that happens because maybe that's a better use of our
6 time and our resources, and other times people want to
7 go ahead with sort of the parallel processing. And
8 typically when it comes to those sorts of issue, I take
9 my cues from the parties. If collectively you all felt
10 that this may all be resolved sooner rather than later
11 and maybe it's not worth anybody's time and resources to
12 brief these various issues until we know if, you know,
13 whatever refund structure and whatever we could
14 potentially resolve this for in terms of settlement that
15 satisfies everyone or not, that doesn't seem to be what
16 I'm hearing here. And to the extent that, you know,
17 there's a will to continue on in a parallel way, that
18 may mean that it's, you know, it's taking extra time and
19 resources to do it that way, but that is always an
20 option.

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22 But I certainly hear you on the idea that
23 potential subclasses makes this perhaps more time-
24 consuming and more complicated than it needs to be, but
25 it, again, still seems to me that the core of this is

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really going to be issues that sound very, very common to everyone, and the idea of certifying a class in the main that is folks who have tickets and weren't able to get in, and then we see if ever there is some further subclass of, you know, folks who have other issues. But I do appreciate your arguments. Anything else on behalf of the WRE defendants?

(pause in proceeding)

THE COURT: WRE, if you are speaking, you are likely muted right now.

MR. BOONE: Sorry, Your Honor, no, nothing further.

THE COURT: All right, in that case we will be adjourned, and everyone have a good rest of your day.

MR. MOORE: Thank you so much, Your Honor.

THE COURT: You're welcome.

ATTORNEY: Thank you, Your Honor.

ATTORNEY: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of BROCKMOLE v. EZ FESTIVALS, 23vcv8106, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: June 9, 2024